

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

JUN 27 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

DOCKET FILE COPY ORIGINAL

Amendment of Rules and Policies
Governing Pole Attachments

)
)
)

CS Docket No. 97-98

COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST"), hereby responds to the Federal Communications Commission's ("Commission") Notice of Proposed Rule Making which requested comment on proposed changes in the Commission's rules governing the rates that utilities may charge for pole and conduit attachments.¹

I. INTRODUCTION AND SUMMARY

U S WEST finds itself in a unique position — not only is one of its subsidiaries, U S WEST Communications, Inc., one of the largest local exchange carriers ("LEC") but another subsidiary, MediaOne,² is the third largest cable company in the United States. As such, U S WEST is both a large lessor and lessee of poles. U S WEST will be harmed by any rule changes which unduly favor either the interests of pole owners or renters. Just and reasonable pole attachment rates

¹ In the Matter of Amendment of Rules and Policies Governing Pole Attachments, CS Docket No. 97-98, Notice of Proposed Rule Making, FCC 97-94, rel. Mar. 14, 1997 ("Notice").

² MediaOne formerly did business as Continental Cablevision.

No. of Copies rec'd
List ABCDE

0211

are as important to cable companies today, as they were in 1978 when the Pole Attachment Act was first adopted.³

In this proceeding, the Commission proposes to further refine its existing cable pole attachment formula to address concerns raised in the Southwestern Bell Telephone Company ("Southwestern Bell") Petition⁴ and a Whitepaper filed recently by a group of electric utilities ("Electric Utilities").⁵ The Commission should reject the proposed modifications to the pole attachment formula contained in the Electric Utilities' Whitepaper. As shown below, these proposed modifications are inconsistent with U S WEST's own experience, not to mention the National Electric Safety Code ("NESC"). The Commission should continue to employ the use of net book costs in calculating pole attachment rates with one modification — to remove the effect of negative net salvage which Southwestern Bell identified in its Petition.

³ In its Notice, the Commission also proposes a conduit methodology to determine the maximum rates that utilities may charge cable companies for the use of conduit. These same rates will be available for telecommunications carriers until the Commission adopts a separate formula for telecommunications carriers some time on or before February 8, 1998, as required by Section 224(e). 47 U.S.C. § 224(e). Given the minimal use of conduit by cable companies at the present, U S WEST believes that the Commission should address the issue of conduit rates for cable companies in its upcoming proceeding to determine just and reasonable pole and conduit rates for telecommunications carriers.

⁴ Petition for Clarification, or in the Alternative, a Waiver of Southwestern Bell Telephone Company, filed Aug. 26, 1994 ("Petition").

⁵ Just and Reasonable Rates and Charges for Pole Attachments: The Utility Perspective, A Position Paper Presented by : American Electric Power Service Corp. et al., prepared by: McDermott, Will & Emery, Aug. 28, 1996.

II. ELECTRIC UTILITIES' ASSERTIONS ON THE AMOUNT OF USABLE POLE SPACE ARE NOT SUPPORTED BY U S WEST'S EXPERIENCE

The current formula for determining the maximum cable attachment rate is as follows:

$$\text{Maximum Rate} = \frac{\frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \text{Carrying Charge Rate} \times \text{Net Pole Investment} \times .95^6}{\text{Total \# of Poles}}$$

In the Commission's formula, the proportion of usable space assigned to cable companies is determined by dividing the space allocated for cable attachments (i.e., one foot)⁷ by the total amount of usable space. Currently, it is presumed⁸ that utility poles have an average height of 37.5 feet with an average of 13.5 feet being usable space.⁹ The Whitepaper argues that the average height of poles used for multiple attachments has increased to 40 feet due to the installation of larger poles and the fact that 30 foot poles are rarely used for cable attachments.¹⁰ As such, the Electric Utilities propose that the average height of poles for calculating pole attachment rates be increased to 40 feet. U S WEST disagrees. While 40 feet is the height of the standard size pole that U S WEST Communications, Inc. uses when it replaces existing poles or installs new poles, the average height of U S WEST's

⁶ This factor would be .85 in the case of power poles. See Notice ¶ 10.

⁷ Id. ¶ 7. See also, In the Matter of Adoption of Rules for the Regulation of Cable Television Pole Attachments, Memorandum Opinion and Second Report and Order, 72 FCC 2d 59, 69-70 ¶¶ 21-22 (1979) ("Second Report and Order").

⁸ U S WEST supports the continued use of rebuttable presumptions in calculating the maximum rate for cable company pole attachments for reasons of administrative efficiency.

⁹ Notice ¶ 7. And see, Second Report and Order, 72 FCC 2d at 69 ¶ 21.

¹⁰ Whitepaper at 9-10.

poles is approximately 38 feet. As a result, U S WEST believes that the Commission should continue to presume that the average height of a utility pole is 37.5 feet.

U S WEST also disagrees with Electric Utilities' claim that 30 foot poles are rarely used for cable attachments and their suggestion that 30 foot poles be eliminated from pole attachment rate calculations.¹¹ A review of U S WEST Communications, Inc.'s pole inventory does not support the Electric Utilities' claims. Attachment 1 shows that approximately 13 percent of U S WEST Communications, Inc.'s poles are 30 feet or less in height. Attachment 2 demonstrates that there is no basis for the claim that poles of 30 feet or less will not support multiple attachments.¹² On the basis of this data, U S WEST cannot support a methodology which would remove 30 foot poles from pole attachment rate calculations. Such an approach is not consistent with U S WEST Communications, Inc.'s experience and would unduly raise maximum pole attachment rates when there is no justifiable financial reason for doing so.

The Electric Utilities' claim that the amount of usable space on utility poles has decreased to 11 feet cannot be sustained if poles of 30 feet or less continue to be included in pole attachment calculations and the average pole height remains at 37.5 feet. On the other hand, U S WEST believes that the 40 inch NESC separation

¹¹ Id. at 8.

¹² In fact, Attachment 2 shows that U S WEST's poles which are 25 feet or less in height are more likely to have two or more attachments than taller poles.

requirement is properly assigned to electric utilities as usable space. In the absence of electric facilities, this space would be usable by other attachers.¹³

In summary, the Commission should leave unchanged at 7.4 percent (i.e., 1/13.5) the amount of usable space assigned to cable company pole attachments.¹⁴

III. THE COMMISSION SHOULD MODIFY THE POLE ATTACHMENT FORMULA TO REMOVE THE EFFECTS OF NEGATIVE NET SALVAGE

The Commission also seeks comment on the problem which Southwestern Bell first brought to its attention in its 1994 Petition for Clarification.¹⁵ In that Petition, Southwestern Bell asked the Commission to modify its pole attachment formula to eliminate the possibility of using a negative value for the net cost of a bare pole (which could result in negative pole attachment rates).¹⁶ Southwestern Bell pointed out that this anomalous situation arose because the cost of pole removal exceeded salvage value (i.e., negative net salvage) and that under certain circumstances the depreciation reserve exceeded gross pole investment. U S WEST Communications, Inc. supported Southwestern Bell's Petition and noted that U S WEST was experiencing a similar situation in some states which it served.¹⁷

¹³ Furthermore, this space is frequently used for street lighting purposes — a use that is clearly associated with the provision of electrical power.

¹⁴ Contrary to the assertions of the Electric Utilities, rather than increasing the cost assignment to cable companies, U S WEST's data and experience would support a slightly lower cost assignment.

¹⁵ See note 4, supra.

¹⁶ Petition at 3-4.

¹⁷ See Comments of U S WEST Communications, Inc., filed Dec. 12, 1994, AAD 94-125. Currently, U S WEST Communications, Inc.'s accumulated depreciation reserve exceeds its gross pole investment in five states — Iowa, Nebraska, Minnesota, North Dakota, and South Dakota. See Attachment 3.

Southwestern Bell's proposed solution to the problem was to exclude net salvage from the depreciation reserve for purposes of calculating the net cost of a bare pole.¹⁸

In its Notice, the Commission seeks comment on the magnitude of the problem and on its proposed solution which differs from that proposed by Southwestern Bell.¹⁹ Attachment 3 contains state-specific data on U S WEST Communications, Inc.'s poles. This Attachment demonstrates that the accumulated depreciation reserve exceeds the original cost of poles in five U S WEST states — thereby resulting in a negative net cost of a bare pole. In three other U S WEST states, the net cost of a bare pole is very close to zero and is expected to turn negative in the near future. These states are Idaho, Wyoming and Montana. Clearly, the negative net salvage problem is not a quirk but a continuing problem which should be resolved at the earliest possible date, preferably in this proceeding.

Under the Commission's formula, negative net pole costs may result in negative pole attachment rates. U S WEST does not believe that it is appropriate to have negative pole attachment rates even if the accumulated depreciation exceeds gross pole investment. Furthermore, U S WEST believes that the cost of pole removal is a bona fide cost associated with providing poles and that all pole users should share in covering this cost.

The Commission proposes to resolve the negative net salvage and negative net cost of poles problem by removing net salvage when the net value of poles

¹⁸ Petition at 3-4.

¹⁹ Notice ¶ 21.

becomes negative. U S WEST supports the Commission's approach as a reasonable middle ground even though it will result in some unexpected fluctuations in rates in the year that the accumulated depreciation reserve exceeds gross plant investment in poles.²⁰

IV. PRIVATE CONTRACTS SHOULD CONTINUE TO BE THE BASIS FOR POLE RENTAL ARRANGEMENTS

Traditionally, pole attachment rates have been negotiated between the parties (i.e., telephone companies, cable companies and electric utilities) and governed by individual contracts. Under the 1978 Pole Attachment Act, cable companies could file complaints with the Commission if they believed that they were being charged unreasonable rates or subjected to unreasonable terms and conditions.²¹ The Commission only became involved if the parties could not agree

²⁰ U S WEST believes that, in calculating pole attachment rates, adjustments in accumulated depreciation associated with negative net salvage should also include a corresponding adjustment to deferred tax reserves. Commission rules require deferred tax reserves to be adjusted when an adjustment to the accumulated depreciation reserve is made for cost of removal. Part 32 rules require that deferred tax reserves (liabilities or assets) be recognized for all book/tax temporary differences. Book/tax temporary differences arise when items of income or expense are reported in different periods for tax versus the regulated books of accounts.

The cost of removal of property, plant and equipment creates a book-tax temporary difference. The cost of removal is recognized in the regulated books of accounts over the book life of the plant prior to retirement or sale by including it in the book depreciation rate. For tax purposes, the cost of removal is recognized at the time of retirement or sale. In effect, the deferred tax reserve associated with the cost of removal builds up over the life of the plant and reverses upon the retirement or sale of the plant. As such, it is appropriate to include a corresponding adjustment to deferred tax reserves if an adjustment is made to the accumulated depreciation reserve to remove the effects of negative net salvage.

²¹ The 1978 Pole Attachment Act only gave the Commission authority over pole attachment disputes in those states which had not adopted state pole attachments acts. 47 U.S.C. § 224.(c)(1).

on pole attachment rates, terms and conditions and the disagreement resulted in a complaint. This remains unchanged with the passage of the 1996 Act. As such, the Commission should do nothing in this or any subsequent pole attachment proceeding to upset the balance between privately negotiated agreements and Commission dispute resolution (i.e., the Commission's complaint process).²²

V. CONCLUSION

U S WEST's pole data and experience demonstrate that the Commission's current presumptions on the amount of usable pole space and percentage of space assigned to cable companies should remain unchanged at 13.5 feet and 7.4 percent, respectively. U S WEST's data also confirms that the current pole attachment formula needs to be modified to remove the effects of negative net salvage.

Respectfully submitted,

U S WEST, INC.

By: James T. Hannon
James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

Of Counsel,
Dan L. Poole

June 27, 1997

Its Attorney

²² Assuming that there are no disputes between the parties to a pole attachment agreement, the Commission should have no role other than to ensure that similarly-situated parties have the same opportunity to enter into equivalent agreements with utilities.

ATTACHMENT 1

Pole Height for

U S WEST Communications 100% Owned Poles

	<u>Percent of Total*</u>
25' & Under	2.17%
30'	10.59%
35'	28.47%
40'	45.53%
45'	10.56%
50'	2.14%
55' & over	<u>0.55%</u>
	100.00%

*This distribution by height of poles is an estimate based on actual data from 9 of the 14 states served by U S WEST Communications.

ATTACHMENT 2

Pole Attachments for U S WEST Communications 100% Owned Poles*

	<u>Tel Only</u>	<u>Tel & Power</u>	<u>Tel & Cable</u>	<u>Tel + 2 or more</u>	<u>Total</u>
25' & Under	8.86%	54.03%	1.38%	35.73%	100%
30'	2.92%	74.68%	4.78%	17.62%	100%
35'	1.38%	59.32%	25.99%	13.31%	100%
40'	3.37%	54.31%	29.32%	13.00%	100%
45'	.37%	46.80%	31.19%	21.64%	100%
50'	.24%	16.73%	54.88%	28.15%	100%
55' & Over	37.96%	24.25%	6.19%	31.60%	100%

* The above pole attachment data by height of poles are estimates based on actual data from 9 of the 14 states served by U S WEST Communications.

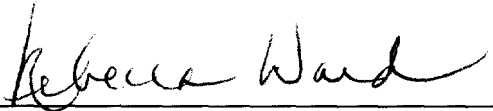
ATTACHMENT 3

U S WEST COMMUNICATIONS POLES

STATE	NET BOOK INVESTMENT	NET BOOK INV. PER POLE
ARIZONA	\$11,403,600	\$73.74
COLORADO	\$5,510,132	\$33.43
IOWA	(\$1,392,732)	(\$17.89)
IDAHO	\$130,759	\$4.13
MINNESOTA	(\$1,369,112)	(\$9.91)
MONTANA	\$20,675	\$0.51
NEBRASKA	(\$187,121)	(\$24.05)
NORTH DAKOTA	(\$213,255)	(\$21.27)
NEW MEXICO	\$2,754,295	\$44.58
OREGON	\$8,342,012	\$79.63
SOUTH DAKOTA	(\$981,998)	(\$56.04)
UTAH	\$3,279,784	\$45.78
WASHINGTON	\$8,685,848	\$40.37
WYOMING	\$71,187	\$2.57
DATA : YEAR 1996		

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 27th day of June, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.



Rebecca Ward

James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

Meredith J. Jones
Federal Communications Commission
Room 918-A
2033 M Street, N.W.
Washington, DC 20554

Michael T. McMenamin
Federal Communications Commission
Room 801-B
2033 M Street, N.W.
Washington, DC 20554

(Including 3 x 5 Diskette w/Cover Letter)

International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

(CS9780.GC/lh)
Last Update: 5/15/97